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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 003391

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TAGS: [PREL](#) [PGOV](#) [IZ](#)
SUBJECT: PROVINCIAL POWERS LAW: NOT QUITE THERE YET

REF: A. BAGHDAD 2692
[1](#)B. BAGHDAD 3323

Classified By: Political Counselor Matt Tueller for reasons 1.4 (b,d)

[1](#)1. (C) Summary and comment: More than a month after the August 26 leaders agreement on the provincial powers law, the Council of Representatives (CoR) last week sent the latest draft to the Shura Council for further revision. CoR members tell us disputed areas remain even in this version. The Prime Minister, for example, does not like that the current language fails to grant him the power to remove a governor. Language on governors' authority over security forces is bracketed and subject to further debate. The Federal Supreme Court ruled on questions submitted by the CoR on September 11, but not all of the Court's decisions were incorporated. Generally, this draft leans in the direction of devolving more power to the provinces and lowering the threshold necessary to remove a governor or dissolve a council (from two-thirds to absolute majority vote). With the CoR in recess until October 20 and with many offices effectively closing for the Eid holiday, we do not expect the Shura Council to complete its review for at least two weeks. End Summary and Comment.

Draft Submitted to CoR but Problems Remain

[1](#)2. (C) CoR Regions and Governorates committee chair Hashim al-Ta'ee (Iraqi Islamic Party, Sunni) told us October 2 that the so-called deputies draft (Draft B) received by the CoR was problematic and needed further legal and stylistic revision. (Note: this draft is significantly different from the earlier version (Draft A) delivered to the deputies following the August 26 leadership communique and thus appears to reflect the additional conceptual work done by the deputies committee. End Note). Al-Ta'ee therefore pulled it from Speaker Mashadani's office and said he would forward it (Draft B) to the Shura Council with a committee report detailing remaining disputed areas, which committee member Muhammed Amin (Tawafuq independent, Sunni) characterized as "minor." Committee deputy chair Nada al-Sudany (Dawa party, Shia) said the draft (Draft B) did not take into account all of the recent rulings by the Federal Supreme Court on some constitutional questions. Two committee members disagreed about whether the deputies would review the draft again after the Shura Council revision and before it is acted upon in the CoR. One member argued the deputies would perform a final review, while another member asserted that the deputies would only receive notification that the Court resolved remaining areas of political contention.

[1](#)3. (C) Ayad Samaraie (Iraqi Islamic Party, Sunni) told us

October 8 that while the leaders had agreed to the draft law "in principle" on August 26, several parts of the text remain in dispute. For example, the Prime Minister wants the authority to dismiss governors, Samaraie said, while CoR members want to require the PM to request the CoR to act to remove the Governor. Samarai also said the PM wants to be able to appoint and remove high-level individuals like Directors General, an authority which some CoR members oppose. The current draft (Draft B) appears to go against the PM's wishes on both points, which led Samaraie to conclude that Maliki would use the Shura Council to re-fashion the draft to his liking.

Federal Supreme Court Rulings May
Help Resolve Remaining Areas of Dispute

14. (SBU) On September 11, the Federal Supreme Court responded to several constitutional questions submitted by the Regions and Governorates committee in July and August. According to al-Ta'ee, the committee had hoped that the rulings would resolve several remaining issues still subject to political dispute. However, the Supreme Court ruled that one key question was beyond its jurisdiction: the relationship between the executive authority of the federal government and the provinces. However, according to al-Ta'ee (but not included in the incomplete copy of the Court's decision he provided to us), the Court determined that the Prime Minister does not have the right to dissolve a provincial council or remove a governor, that the governor is the highest executive authority in the province and that the provincial council has control over the removal of the Provincial Director of Police (PDOP). According to the incomplete copy we obtained, the

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Court also decided:

-- that the hiring and firing in local security agencies falls under the jurisdiction of the regions and provinces and not the federal authority;

-- that the provincial councils may enact local laws to regulate administrative and financial affairs and that the Council of Representatives may not enact local laws for a province;

-- that the allocation of funds to the regions and provinces falls within the jurisdiction of the federal government in accordance with Article 121;

-- that provincial councils should adhere to Article 49 and women should comprise at least one-fourth of the council's membership.

Latest Draft Still Not Close to Final

15. (C) The most recent iteration of the law (Draft B, the one that we understand is now with the Shura Council) contains articles that remain subject to political dispute and that in some cases contradict the Supreme Court's rulings. Selected provisions in this draft include:

-- the Prime Minister does not have the power to remove a governor. The PM may propose to the CoR a governor's removal; the CoR then needs an absolute majority vote to remove him. A governor may also be removed by an absolute majority vote of the provincial council (PC) based on a recommendation of one-third of the PC members. A governor can appeal removal by applying to the Federal Supreme Court within 15 days. This draft changes the threshold for removal from two-thirds vote to only an absolute majority;

-- governors may command federal security forces in case of

emergency but this article remains disputed. It adds new ambiguous language to the language in the previous draft, "provided he has the right to do this," and contains, in brackets, a line that reads "there is another opinion to delete this article;"

-- provincial and local councils are the highest legislative and oversight authority within their administrative boundaries and have the right to pass local laws as long as they are constitutional. Councils are subject to the oversight of the CoR;

-- the PCs elect the governor and two deputy governors. The governor may have five assistants to handle technical and administrative affairs;

-- Directors General (DGs) may be removed from office by absolute majority of the PC based on a proposal by the governor or five members of the PC (the PM may not remove DGs);

-- district councils shall have at least 10 members and sub-district councils shall have at least seven members. Council directors shall be elected by absolute majority vote;

-- the CoR can dissolve a PC by absolute majority vote at the request of the governor or one-third of the PC's members. The PC can dissolve a district council by absolute majority vote at the request of the district mayor, district council chairman or one-third of the district council.

¶6. (C) The current draft law adds a brand-new article that provides for the Baghdad mayor (Ameen Baghdad) to be elected by the PC after the nomination of three candidates by the governor and approval of the PC. It provides for his removal and ranks his position as akin to a Deputy Minister. The wording suggests that Baghdad's traditional "special status" as a capital may be weakened by suborning the mayor to the PC. This article may end up conflicting with Article 124 of the Iraqi Constitution that calls for "special status" and a specific Baghdad law.

What Happens Next

¶7. (C) Al-Ta'ee estimated on October 2 that the Shura Council would need one to two weeks to revise the draft law (Draft

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B). The CoR went into recess for Eid al-Fitr on October 8 and will return on October 20; many Iraqis will be traveling outside of Baghdad in the interim. Once the Shura Council returns the law to the CoR, committee member al-Sudany said she thought one of the committee members would read the changes to the law on the floor as a third reading (note: the law had a second reading in February) and then hold a vote. CoR Deputy Speaker al-Attiya repeated this expectation to the Ambassador on October 4 (ref b). Post will continue to use every opportunity to impress upon GOI officials and CoR members the need for quick action once the CoR reconvenes, stressing that the credibility of the 3 1 process, and of the CoR itself, is on the line.
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